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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,675	02/25/2002	Cornelis Margaretha Theodorus Maria Bongers	VERHEES 207-KFM	2574

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Karl F Milde Jr
Milde Hoffberg & Macklin
Suite 460
10 Bank Street
White Plains, NY 10606

EXAMINER	
MADSEN, ROBERT A	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,675	BONGERS, CORNELIS MARGARETHA THEODORUS	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 February 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed February 25, 2004 has been entered. Claims 1-18 have been cancelled, and claims 31 and 32 have been added. Claims 19-32 remain pending in the application.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 19, 21,22,and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994).

4. Gorlich et al. teaches a plural atmosphere package comprising a compartment tray with different types of food, such as meat and salad, held separately within different compartments that are sealed with a film structure wherein some of the parts of the film structure are different for each compartment, as recited in claim 19, wherein the film comprises a first film and a second film as recited in claim 21 (e.g. membranes 30 and 32 in Figures 5 and 6) that are adjacent to one another and have different characteristics or gas permeability, as recited in claims 22 and 31, and each compartment may contain a different modified atmosphere(Abstract, Column 1, lines 15-52,Column 2, line 42 to Column 3, line 11, Column 3, line 56 to Column 4, line 15). Thus, Gorlich et al. teach the general concept of providing multi-compartment trays sealed with film structures comprising a first and a second film so that a different storage atmosphere is possible for each compartment of the tray. Gorlich et al. are

silent in teaching the film further comprises a material that reacts with gases and is disposed on parts of the film structure to control the storage atmosphere as recited in claim 19.

5. Krebs also teaches modified atmosphere packaging meat trays covered by an oxygen barrier film. Krebs teaches it was also well known to provide oxygen scavengers with modified atmosphere packages to further assure a low oxygen environment . Krebs teaches the preferred oxygen scavenger is a strip of film that is adhesively attached to the oxygen barrier film on the inside of the package and comprises material that reacts with oxygen(Column 1, line 5 to Column 2, line 21, Column 2, lines 54-66, column 3, line 35 to Column 4, line 38, Column 4 line 48 to Column 5, line 31, Column 6, lines 4-28). Krebs teaches the benefit of providing an oxygen scavenger strip is that it is easy to dispense and attach the oxygen scavenger layer to a variety of packages without having to customize a film structure for each type of package (Column 1, lines 35-63 Column 6, lines 4-28).

6. Therefore, it would have been obvious to modify Gorlich and include a part of the film that reacts with gases in a compartment of the tray, as recited in claim 19 since Krebs teaches applying a strip to a film applied to a modified atmosphere tray package will not only protect oxygen-sensitive foods, such as meat as taught by Gorlich, but offers the benefits of an being easy to dispense and attach to a variety of packages without having to customize a film structure for each type of package.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 19, 21,22,and 31 above, further in view of Myers (US 4515266).

8. Gorlich teaches each compartment has a permeability depending on the type of food selected, which can include meat and salad, and may include a modified atmosphere, but is silent in teaching perforations per se on a portion of the film structure. Myers also teaches produce stored in a container under modified atmosphere and covered by a film. Myers teaches providing perforations on the film will inhibit air inflow but allow gas outflow to prevent distortion (Abstract , Column 1. lines 5-68). Therefore, it would have been obvious to further modify Gorlich et al. and provide perforation in a part of the film structure since Gorlich et al. teach the tray may contain salad and Myers teaches providing perforation in the lid stock film of a produce container, wherein the produce is held under modified atmosphere, in order to prevent build up of gases and eventual rupturing of the container.

9. Claims 23,26-30, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994).

10. Regarding claims 23,26-28,30,32, Gorlich et al. teach a method of separately packaging various types of food in a single package (such as meat and salad) comprising the steps of placing one type of food in each compartment, placing a film structure above the compartments wherein at least some of the parts of the film are a first and second film that are of different characteristics or permeability and formed

based on characteristics of the food (e.g. items 30 and 32 in Figure 5 and 6) as recited in claims 26,28, 30, and 32 , are adjacent to one another as recited in claim 28, are produced by fastening the two films to each other after which one film is removed locally as recited in claim 27(i.e. as explained with respect to films 30 and 32 in Figures 5 and 6 Column 2, lines 41-63 and Column 3, lines 26-55and sealing the film structure around the openings of the compartments as recited in claim 23(Abstract, Column 1, lines 15-52,Column 2, line 42 to Column 3, line 11, Column 3, line 56 to Column 4, line 15). Thus, Gorlich et al. teach the general method of separately packaging various types of food in different a controlled or modified atmospheres. Gorlich et al. are silent in teaching some of the film structure has a material that reacts with gases in the compartment, as recited in claim 23.

11. Krebs also teaches filling trays with meat, sealing with a modified atmosphere, trays and covering the covered by an oxygen barrier film structure. Krebs teaches it was also well known to provide oxygen scavengers with modified atmosphere packages to further assure a low oxygen environment . Krebs teaches the preferred oxygen scavenger is a strip of film that is adhesively attached to the oxygen barrier film on the inside of the package and comprises material that reacts with oxygen(Column 1, line 5 to Column 2, line 21, Column 2, lines 54-66, column 3, line 35 to Column 4, line 38, Column 4 line 48 to Column 5, line 31, Column 6, lines 4-28). Krebs teaches the benefit of providing an oxygen scavenger in a second film or sticker is that it is easy to dispense and attach the oxygen scavenger layer to a variety of packages without having

to customize a film structure for each type of package (Column 1, lines 35-63 Column 6, lines 4-28).

12. Therefore, it would have been obvious to modify the film structure of Gorlich et al. and include a part that reacts with gases in the compartment, since Krebs teaches modified atmosphere meat tray packages preferably contain an oxygen scavenger provided in a strip applied to a film structure to not only protect oxygen-sensitive foods, such as meat as taught by Gorlich, but offers the benefits of an being easy to dispense and attach to a variety of packages without having to customize a film structure for each type of package.

13. Regarding claim 29, Gorlich et al. teach it *may* be advantageous to form a film structure comprising two films of different characteristics after filling the tray (column 3, lines 27-55), but is silent in teaching that the processing or forming of the film structure takes place before the food is placed in the tray. Krebs teaches providing film structures of two films with different characteristics to cover trays may be done *either* applying each film of the structure separately to the tray as Gorlich et al. teach (e.g. note claim 17) *or* by first forming the film structure comprising two films with different characteristics before applying the film structure to the tray (e.g. note claim 26), depending if one wanted to apply one of the films to a variety of packages or apply the film structure to a particular package, such as for a tray (Column 5, line 48 to Column 6, line 28). Therefore, it would have been obvious to modify Gorlich et al. and process or form the film structure before the food is placed in the tray since Krebs teaches forming a film structure comprising two films of different characteristics may be done before or

after the food is placed on the tray, depending on if it desired to use one film for a variety of packages or if the entire film structures is limited to use as a particular package.

14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 23,26-30, 32 above, further in view of Rooney et al. (WO9910251).

15. Modified Gorlich et al. include oxygen-scavenging material, but are silent in teaching irradiating a portion of the film structure.

16. Rooney et al. teach meat trays sealed by film structures including oxygen-scavenging layers. Rooney et al. teach it is advantageous to use oxygen scavenger layers that are triggered by irradiation so that the oxygen scavenging material can be stored under standard conditions prior to being applied to the package(Page 1, lines31 to Page 2, line 7, Page 9, lines 15-25, Page 10, line 34 to Page 11, line12). Therefore, it would have been obvious to further modify Gorlich and irradiate a portion of the film structure (i.e. the oxygen scavenging portion) since Rooney et al. teach irradiation triggered oxygen scavenging layers can be advantageously stored under standard conditions prior to sealing the trays.

17. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gorlich et al. (US 5901848) in view of Krebs (US 5896994) as applied to claims 23,26-30, 32 above, further in view of Myers (US 4515266).

18. Gorlich teaches each compartment has a permeability depending on the type of food selected, which can include meat and salad, and may include a modified atmosphere, but are silent in teaching perforations per se on a portion of the film structure. Myers also teaches produce stored in a container under modified atmosphere and covered by a film. Myers teaches providing perforations on the film to inhibit air inflow but allow gas outflow in order to prevent distortion (Abstract , Column 1, lines 5-68). Therefore, it would have been obvious to further modify Gorlich et al. and provide perforations in a part of the film structure since Gorlich et al. teach the tray may contain salad and Myers teaches providing perforation in the lid stock film of a produce container, wherein the produce is held under modified atmosphere, in order to prevent build up of gases and eventual rupturing of the container.

Response to Arguments

19. Applicant's arguments with respect to the rejections made under 35 U.S.C. 102(b) in light of the amended claim language have been fully considered and are persuasive. Therefore, the rejections of claims 19,20 under 35 U.S.C. 102(b) as being clearly anticipated by Snow Jr. (US 3188215), claims 19,20 under 35 U.S.C. 102(b) as being clearly anticipated by Virnig (US 3672916), claims 23,25,29 and 30 under 35 U.S.C. 102(b) as being clearly anticipated by Virnig (US 3672916), claims 19,20 under 35 U.S.C. 102(b) as being clearly anticipated by Levinson (US 4390555), and claims 23-25,29, and 30 under 35 U.S.C. 102(b) as being clearly anticipated by Levinson (US 4390555) have been withdrawn.

20. Applicant's arguments with respect to the rejections made under 35 U S C. 103(a) in light of the amended claim language have been fully considered and are persuasive. Therefore, the rejections of claims 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over Levinson further in view of Wysocki (US 4228945) and claims 26 –28 under 35 U.S.C. 103(a) as being unpatentable over Levinson further in view of Wysocki (US 4228945) have been withdrawn.

21. However, upon further consideration, new grounds of rejection have been made as set forth above.

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700